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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/038,765 | 01/02/2002 | Jennifer Marvin | 659/923 | 6302 |

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| EXAMINER |
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KIDWELL, MICHELE M

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| ART UNIT | PAPER NUMBER |
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3761

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/038,765 | Applicant(s) MARVIN, JENNIFER | |
| | Examiner Michele Kidwell | Art Unit 3761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 9, 10, 16, 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-15, 17-18 and 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 8, 11 – 15 and 17 – 18 and 21 – 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Iten (EP 0610951 A1).

With respect claim 1, Van Iten discloses a tampon applicator assembly comprising (a) an expandable tampon (col. 6, lines 39 – 41) adapted to be placed in a vagina to absorb body fluid, said tampon having a first end portion and a second end portion (figure 8); (b) a withdrawal member (14) attached to at least one of the first end portion and the second end portion of the tampon (figure 8), the withdrawal member includes a stopping member (16); and (c) a single piece applicator (80) having a leading end portion (82) and a trailing end portion (end opposite 82), said leading end portion engaging said tampon (figure 11), and said trailing end portion adapted to releasably secure said stopping member against movement in at least one direction as set forth in col. 8, lines 32 – 37.

As to claim 2, Van Iten discloses an assembly wherein the trailing end portion of the single piece applicator comprises a channel (84) adapted to receive said withdrawal member as set forth in figures 10 – 11.

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With reference to claims 3 – 4 and 6, Van Iten discloses a single piece applicator that is generally planar and has a generally cylindrical cross-section as set forth in figures 10 – 11.

As to claim 5, Van Iten discloses a single piece applicator having a hollow interior through which the withdrawal member passes as set forth in figure 11.

Regarding claims 7 and 17, Van Iten discloses a single piece applicator comprising at least one orientation indicator as set forth in col. 8, lines 40 – 42.

With reference to claim 8, Van Iten discloses the stopping member comprising a knot as set forth in figures 10 – 11.

As to claim 11, Van Iten discloses a tampon applicator assembly comprising (a) an expandable tampon (col. 6, lines 39 – 41) adapted to be placed in a vagina and to absorb body fluid, said tampon having an expanded position and a contracted position; (col. 6, lines 39 – 41) and (b) a single piece applicator having a trailing end portion (end opposite 82) and a leading end portion (82), said leading end portion of said applicator engaging said tampon while said tampon is in its contracted position as set forth in col. 8, lines 20 – 37 and in figures 10 – 11.

Regarding claim 12, Van Iten discloses an assembly wherein the leading end portion is adapted to secure the tampon in its contracted position as set forth in col. 8, lines 20 – 37 and in figures 10 – 11.

As to claim 13, Van Iten discloses an assembly further comprising a withdrawal member (14) attached with the tampon as set forth in figures 10 – 11.

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With reference to claim 14, Van Iten discloses a withdrawal member (14) including a stopping member (16) as set forth in figures 10 – 11.

As to claim 15, Van Iten discloses an assembly wherein the trailing end portion is adapted to secure the stopping member against movement in at least one direction as set forth in col. 8, lines 28 – 32.

Regarding claim 18, Van Iten discloses a method of using a tampon within a vagina, comprising (a) inserting a tampon applicator assembly into a vagina (col. 2, lines 1 – 20), said assembly including (i) an expandable tampon adapted to absorb body fluid (col. 6, lines 39 – 41), said tampon having a first end portion and a second end portion (figures 8 – 9); (ii) a withdrawal member (14) attached to at least one of the first end portion and the second end portion of the tampon, said withdrawal member including a stopping member (16) as shown in figures 8 – 11; and (iii) a single piece applicator (80) having a leading end portion (82) and a trailing end portion (end opposite 82), said leading end portion engaging said tampon, and said trailing end portion adapted to releasably secure said stopping member against movement in at least one direction (col. 8, lines 21 – 37); (b) releasing said tampon from said single piece applicator; and (c) withdrawing said single piece applicator from the vagina as set forth in col. 8, lines 43 – 52.

Regarding claim 21, Van Iten discloses an assembly wherein the leading end portion of the applicator secures the tampon in its contracted position as set forth in col. 8, lines 20 – 37 and in figures 10 – 11.

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With reference to claim 22, Van Iten discloses an assembly wherein the leading end portion of the applicator houses a first and a second trailing end portion of the tampon as set forth in figures 10 – 11.

The examiner contends that any two portions of the withdrawal string may be considered first and second trailing end portions of the tampon with the leading end portion of the applicator being considered as any portion of the applicator including those areas designated by reference character “82” and “80” as shown in figure 11.

With reference to claim 23, Van Iten discloses an assembly wherein the leading end portion of the applicator houses a first and a second trailing end portion of the tampon as set forth in figures 10 – 11.

The examiner contends that any two portions of the withdrawal string may be considered first and second trailing end portions of the tampon with the leading end portion of the applicator being considered as any portion of the applicator including those areas designated by reference character “82” and “80” as shown in figure 11.

With reference to claim 24, Van Iten discloses a method wherein the leading end portion of the applicator houses a first and a second trailing end portion of the tampon as set forth in figures 10 – 11.

The examiner contends that any two portions of the withdrawal string may be considered first and second trailing end portions of the tampon with the leading end portion of the applicator being considered as any portion of the applicator including those areas designated by reference character “82” and “80” as shown in figure 11.

With reference to claim 25, Van Iten discloses a method wherein the leading end portion of the applicator secures the tampon in its contracted position as set forth in col. 8, lines 20 – 37 and in figures 10 – 11.

Response to Arguments

Applicant's arguments filed October 18, 2004 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the leading edge of the applicator to engage the tampon) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

While the applicant presents arguments that are not commensurate with the scope of the claims, the examiner continues to maintain the previous rejection. The examiner contends that the leading end portion of the applicator does in fact engage the tampon. If the leading end portion of the applicator did not engage the tampon, then the tampon would not be allowed to fit snugly and securely against the capsule as taught by Van Iten in col. 8, lines 21 – 37.

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Examiner
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